

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Conrad O. Gardner

Group Art Unit 3619

Application No.: 08/896, 514

Examiner: M.Mar

Filing Date: 06/23/97

Docket No.: 95-004 M

Date: May 8, 2001

For: Extended Range Motor Vehicle Having Ambient Pollution Processing

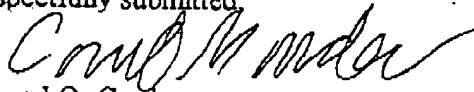
Attention: Board of Patent Appeals and Interferences
Assistant Commissioner for Patents
Washington, D.C. 20231

Request Reinstatement of the Appeal

Sir:

Applicant files SUPPLEMENTAL BRIEF ON APPEAL pursuant to reinstatement of the Appeal.

Respectfully submitted,



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I certify that on the date specified below this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231

May 8, 2001 Conrad O. Gardner

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SUPPLEMENTAL BRIEF ON APPEAL

Sir:

Applicant files this SUPPLEMENTAL APPEAL BRIEF in triplicate in response to the Office Action reopening the prosecution dated April 2, 2001 within the three month period for response.

I. STATUS OF CLAIMS

1. Claims pending: 30-41 and 46-61
2. Claims withdrawn from consideration: 30-33
3. Claim allowed: 61

4. Claims rejected: 34-41 and 46-60

II. INCORPORATION BY REFERENCE

Applicant hereby incorporates by reference Sections I through VIII and APPENDIXES A,B, and C of the BRIEF ON APPEAL.

III. Claims 34-41, 46-49, 53 and 54 indicated as allowable subject to changes suggested to overcome a new rejection made under 35 USC 112, second paragraph (paragraph 5 of the Office Action).

Claims 55,56,57 and 58 are indefinite under 35 U.S.C.112

IIIa. ARGUMENT IN RESPONSE TO III

M.P.E.P Section 2171 Two Separate Requirements for Claims Under 35 U.S.C 112, Second Paragraph:

- (A) the claims must set forth the subject matter that applicants regard as their invention; and,
- (B) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

With respect to A, a subjective requirement, applicant has defined his invention highlighting in individual claims key features of the present system.

With respect to B, claims 34-41, 46-49, 53 and 54 are to be "evaluated in the context of whether the claims are definite - i.e., whether the scope of the claim is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art."

The metes and bounds of the claims define over the prior art as presented in applicants BRIEF ON APPEAL. Further the scope of the claims are clear to the Examiner applying the standard of

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a hypothetical person possessing the ordinary level of skill in the pertinent art upon reading of applicant's specification for the suggested language.

M.P.E.P. Section 2173.04 Breadth is Not Indefiniteness

"If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C 112, second paragraph."

As a consequence of the preceding, it is believed that the rejection under 35 U.S.C.112, second paragraph should not be sustained and these claims should be allowed.

With respect to the question of indefiniteness in each of of claims 55,56,57,58,59,and 60 see ISSUES 1 of applicants BRIEF ON APPEAL.

IV. OFFICE ACTION CLAIM REJECTIONS- 35 U.S.C. 102

Claim 55 is rejected under 35 U.S.C. 102 (b) as being anticipated by Kenyon (of record).
Paragraph 7 of the Office Letter

"Note the engine and alternator arrangement which provides quick surges of power for rapid acceleration of the vehicle"

APPLICANTS RESPONSE

See ISSUES 2. of applicants Brief on Appeal

Note further that Kenyon at col.4, line 17 on states that to achieve sudden acceleration a switching mode causes a battery and alternator are connected in series across a motor. Clause "a"

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of claim 55 recites in the method of operation "rapidly capturing power from a continuously running low horsepower internal combustion engine to charge a fast charge-discharge battery without loss of said power". Nothing in Kenyon shows this essential element of claim 55 and such rejection under 35 U.S.C 112 is without basis.

Claim 55 is rejected under 35 U.S.C. 102 (b) as being anticipated by Kim. Paragraph 8 of the Office Letter.

"Note the continuous running low powered engine for operating the generator."

APPLICANTS RESPONSE

See ISSUES 3 of applicants Brief on Appeal

It should be further noted that Kim shows only the portion quoted by the Examiner and therefore fails to show the entire subject matter of Claim 55 as required by 35 U.S.C. 102(b).

Claims 55,57,58, and 60 are rejected under 35 U.S.C. 102 (b) as being anticipated by Ellers (of record). Paragraph 9 of the Office Letter.

APPLICANTS RESPONSE

See ISSUES 4 of applicants Brief on Appeal

Claims 50-52,56, and 59 are rejected as being unpatentable over Ellers (of record) Paragraph 11 of the Office Letter.

APPLICANTS RESPONSE

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See ISSUES 5 of applicants Brief on Appeal with respect to Claims 50-52

The rejection of claims 56 and 59 as unpatentable over Ellers (of record) under 35 U.S.C. 103 constitutes a new rejection although not labeled as such.

An extensive technical discussion Of Ellers is found at ISSUES 4 of applicants BRIEF ON APPEAL. Ellers is not an extended range hybrid and there is no teaching or suggestion upon a reading of Ellers. In fact, entirely the opposite results from Ellers system design. The internal combustion engine drives a generator "only when battery voltage is below 5.25 volts per 6 volt battery (col.2, lines 44-50). The Ellers system requires the vehicle to " be driven approximately 30% of its mileage over 55 mph (on ICE) the batteries would never need charging from an outside source" (col.4, line 67 to col.5, line 2). Applicants title of this patent application is in fact titled "Extended range motor vehicle..."

Neither clause (a) or (b) of applicants claim 55 (which should be correctly numbered 56) is in any manner made obvious within the meaning of 35 U.S.C. 103 from Ellers, let alone the combination which provides extended range while still maintaining low pollution levels. Clause (a) controls pollution output levels from the internal combustion engine operating within a small range of speeds about its most efficient operating speed from a power and pollutant output standpoint while clause (b) provides energy storage for extended range operation in a nickel cadmium fast-charge-discharge battery.

Claim 59 utilizes a fast charge-discharge battery to power the electric motor while conserving power during running of the internal combustion engine. The importance of the fast-charge-discharge battery in the system over lead acid batteries in rapid energy storage is referenced in applicants specification e.g. page 7, line 6.

CONCLUSION

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In view of the preceding SUPPLEMENTAL APPEAL BRIEF when considered with matters incorporated herein from applicants APPEAL BRIEF, applicant respectfully requests the Board of Appeals to find the appealed claims allowable.

Respectfully submitted,



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